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A-570-001
Sunset Review
Public Document

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Five-Year Sunset Review of the
Antidumping Duty Order on Potassium Permanganate from the People's Republic
of China; Final Results

Summary

We have analyzed the substantive response of the interested parties participating in the second sunset review of the antidumping duty order on potassium permanganate from The People's Republic of China ("PRC"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received comments.

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

The Department of Commerce ("the Department") published in the Federal Register its determination that imports of potassium permanganate from the PRC were being sold in the United States at less than fair value. See Final Determination of Sales at Less Than Fair Value; Potassium Permanganate from The People's Republic of China, 48 FR 57347 (December 29, 1983). The antidumping duty order on potassium permanganate from the PRC was published on January 31, 1984. See Antidumping Duty Order; Potassium Permanganate from The People's Republic of China, 49 FR 3897 (January 31, 1984). In the antidumping duty order, the Department issued a weighted-average dumping margin of 39.63 percent for China National Chemicals Import and Export Corporation ("SINOCEM"), and a PRC-wide rate of 39.63 percent.

The Department conducted two administrative reviews following the imposition of the order. See Final Results of Antidumping Duty Administrative Review; Potassium Permanganate from the People's Republic of China, 56 FR 19640 (April 29, 1991), and Potassium Permanganate from The People's Republic of China, Final Results of Antidumping Duty Administrative Review, 59 FR 26625 (May 23, 1994).

On November 2, 1998, the Department initiated its first sunset review of the antidumping duty order, of a transition order, on potassium permanganate from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (“Sunset”) Review, 69 FR 58890 (October 1, 2004). In the final results of the first sunset review, the Department determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Review; 64 FR 16907 (April 7, 1999)(“First Sunset Review”). As a result, on November 24, 1999, the Department published a notice of continuation of the order. See Continuation of Antidumping Duty Order; Potassium Permanganate from the People’s Republic of China; 64 FR 66166 (November 24, 1999, (“Continuation Notice”).

Since the final results of the first sunset review, the Department conducted the following administrative reviews. See Potassium Permanganate from the People’s Republic of China, Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001), and Potassium Permanganate from the People’s Republic of China, Final Results of Antidumping Duty Administrative Review, 68 FR 51765 (August 28, 2003).

Background

On October 1, 2004, the Department initiated a sunset review of the antidumping duty order of potassium permanganate from the PRC. See Initiation of Five-Year Sunset Review, 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate from a domestic interested party, Carus Chemical Company (“Carus”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. Carus claimed interested party status as a domestic producer of the subject merchandise as defined in section 771(9)(C) of the Act. On May 3, 2004, the Department received a complete substantive response from Carus within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. The Department determined that the respondent interested party response was inadequate. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C) of the Department’s regulations, the Department conducted an expedited sunset review of this antidumping duty order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(i)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the only interested party in this proceeding, Carus.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party's Comment

Carus asserts that it is highly likely that dumping would continue or recur if the order on potassium permanganate from the PRC were revoked. See Carus Substantive Response ("Substantive Response"), November 1, 2004, at 2. Carus argues that dumping margins have continuously been in place since the imposition of the order. Specifically, dumping margins have increased from 39.64 percent, the investigation rate, to 128.94 percent rate, the most recent rate from an administrative review. Id. at 7. Carus maintains that continued dumping with a discipline in place is compelling evidence that PRC exporters would continue dumping if the order were to be removed. In addition, Carus notes that U.S. imports of subject merchandise during the sunset review period have been virtually nonexistent – roughly 500 metric tons in the first three years and no imports of subject merchandise since 2002. See Carus Substantive Response at 8.

Carus argues that other factors also support the likelihood of dumping if the order were revoked including: (1) the attractiveness of the U.S. market, (2) the existence of European Union and Indian antidumping orders, (3) PRC overcapacity and export orientation, (4) substantial evidence of PRC circumvention, (5) advancements in PRC production technology, and (6) the growth of internet trading of potassium permanganate. Id. at 9-25

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department normally determines that revocation of an antidumping duty finding is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the finding, (b) imports of the subject merchandise ceased after the issuance of the finding, or (c) dumping was eliminated after the issuance of the finding and import volumes for the subject merchandise declined significantly.

In the final determination of the investigation, the Department found that imports of potassium permanganate from the PRC were being sold in the United States at less than fair value. Since the issuance of the antidumping duty order, PRC exporters continued dumping at levels above de minimis. As noted above, through the process of administrative reviews, the Department established higher dumping margins compared to the margins found in the investigation. In the final results of the first sunset review, we determined that revocation of the order would likely lead to the continuation or recurrence of dumping. In subsequent administrative reviews of this order, the Department found that dumping continued at margins ranging from 107.32 percent to 128.94 percent. The Department also notes the dramatic reduction in import volumes following

the establishment of a single rate of 128.94 percent for all potassium permanganate of PRC origin. Official import statistics show that from 2000 through 2004, imports of subject merchandise remained at low levels with periods of no shipments.

The Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Cash deposit rates at above the de minimis level continue in effect for exports of the subject merchandise by all known PRC manufacturers/exporters. Because dumping has continued with the antidumping duty order in place, and imports of subject merchandise have virtually ceased during the sunset review period, the Department determines that dumping is likely to continue if the order were to be revoked.

With respect to the other factors raised by Carus, because the Department is basing this determination on the continued existence of margins above de minimis, and the virtual cessation of imports during the sunset review period, it is not necessary to address Carus' arguments concerning other factors.

2. Magnitude of the Margin

Carus suggests that the Department report to the ITC a rate of 128.94 percent. Carus argues that the history of margins and imports under this order, in addition to PRC exporters' behavior during the past five years, demonstrate this is the margin likely to prevail if the order were revoked. This margin is also the margin reported to the ITC in the final results of the first sunset review.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is to be revoked. The Department normally will select a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA at 890, and the House Report at 64. However, in certain instances the Department may report to the ITC a more recent calculated rate.

In this instance, we find it appropriate to report a more recent rate to the ITC. In January 1990, Carus requested an administrative review of PRC exports of potassium permanganate to the United States. In that administrative review, the Department found dumping of potassium permanganate at 128.94 percent and established a new deposit rate of 128.94 percent for all PRC producers of 128.94 percent. This more recent margin was reported to the ITC in the final results of the first sunset review. Following the first sunset review, the Department continued to find dumping margins ranging from 107.32 percent to 128.94 percent.

Based on information on the record and comments provided by Carus, we determine that the

